

GUIDING PRINCIPLES OF ETHICAL CONDUCT

DRAFT FOR COMMISSIONER REVIEW

ARTICLE 1

STATEMENT OF PURPOSE

Under T.C.A. §3-6-106, the Tennessee Ethics Commission (“Commission”) was given the responsibility to recommend guiding principles of ethical conduct for consideration and adoption by the legislative and executive branches. Hence, the purpose of this Guide is to provide the officials listed in §3-6-106 these suggested standards of ethical conduct when serving the State of Tennessee.

The Commission was established to secure and enhance the integrity of the processes of government and to restore and sustain the public’s confidence in government by increasing the integrity and transparency of State and local government. All citizens of the State of Tennessee have the right to expect that government will be administered and managed with the highest degree of professionalism void of undue influence by any individual or group. It is, thus, the obligation of every public official to conduct himself or herself in a manner that will not engender public concern and violate the public trust.

ARTICLE 2

DEFINITIONS

- (1) “**Compensation**” means any salary, fee, payment, promise, forbearance, reimbursement, or other valuable consideration, or any combination thereof, whether received or to be received.¹
- (2) “**Gift**” means any payment, honorarium, subscription, loan, promise, advance, forbearance, rendering, or deposit of money or services, unless consideration of equal or greater value is received. “Gift” does not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person’s immediate family or from a relative within the third degree of consanguinity of the person or of the person’s spouse, or from the spouse of any such relative. “Gift” does not include the waiver of a registration fee for a conference or educational seminar.²
- (3) “**Immediate Family**” means a spouse or minor child living in the household.³
- (4) “**Public Official**” includes:

- a. Members of the General Assembly;

¹ T.C.A. § 3-6-301(7)

² T.C.A. § 3-6-301(11)

³ T.C.A. § 3-6-301(12)

- b. The Secretary of State;
- c. The Comptroller of the Treasury;
- d. The State Treasurer;
- e. The Governor;
- f. Members of the Governor's cabinet; and
- g. Cabinet level staff within the Governor's office.⁴

(5) “*Solicit*” means to entreat, to implore, to ask, to attempt, or to try to obtain.⁵

ARTICLE 3 CONFLICTS OF INTEREST

SECTION 1. *Independence of Judgment.* Public officials should be independent, impartial, and avoid conflicts of interest and the appearance of a conflict of interest when performing their duties. In addition, all public officials should be elected, appointed, hired, and promoted based upon their qualifications, integrity, honesty, competence, and dedication to fulfilling the public policies of the State.

- (1) No public official should have any undisclosed interest, financial or otherwise, directly or indirectly, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in conflict with the proper discharge of his or her duties in the public interest.⁶
- (2) No public official should accept another position, whether compensated or not, which will either impair, or is likely to (a) impair the public official's independence of judgment as to the public official's duties or employment, or (b) require or induce the public official to disclose confidential or inside information acquired in the course of and by reason of the performance of the official's duties other than as permitted or required by law.⁷
- (3) No public official, member of the official's immediate family, or a business, in which he or she is an officer or holds greater than ten percent⁸ (10%) interest should bid on, or otherwise respond to, a request for proposal or information, or seek any contract with the State, valued at one hundred dollars (\$100) or more, other than a contract of employment as a public official or pursuant to a court

⁴ T.C.A. § 3-6-106 (a)(1)(A-B).

⁵ T.C.A. § 3-6-301(22).

⁶ Derived from the Louisiana Code of Governmental Ethics.

⁷ Derived from the Louisiana Code of Governmental Ethics.

⁸ Results from a doubling of the figure in T.C.A. § 8-50-502(2).

appointment, unless the contract has been awarded through an open and public process (unless required by law to be kept confidential), including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded.⁹

- (4) No public official who is involved in making decisions relating to the awarding of State grants or contracts should ask any officer, director, employee, or agent of any current or prospective contractor or grantee or contractor to reveal: (a) the party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual or entity voted for any elected official or candidate for elective office.¹⁰
- (5) No public official should take part in any contracting decision relating to: (a) a member of the public official's immediate family; or (b) any entity in which a member of the official's immediate family is an officer, director, or partner, or in which a member of the official's immediate family owns or controls ten percent¹¹ (10%) or more of the stock of such entity. If a contracting matter arises relating to a member of the official's immediate family, then the public official should advise his or her supervisor (or another person who would have authority to make such decision) of the relationship and should be recused from any and all discussions or decisions relating to the matter.¹²
- (6) No public official, in the performance of his or her official duties, should request or demand that any other person or entity make or offer to make any monetary contribution or in-kind contribution to any campaign or to any political campaign committee in exchange for, or as condition of, receiving some benefit from the State of Tennessee or any department, agency or official thereof, to the person or entity whose contribution is requested or demand or to the person making the request or demand.¹³
- (7) A public official should not, by his or her statements or conduct, give reasonable basis for the impression that any person can improperly influence him or her or receive favoritism in the performance of his or her official duties, or that the official's decisions are affected by the kinship, rank, position, or influence of any party or person. A public official must be prepared to disclose the conflict or the potential conflict of interest or relationship and, if necessary, recuse himself or herself in order to negate any appearance of improper influence.¹⁴

⁹ Derived State of New York 2006/2007 Executive Orders No. 2.

¹⁰ Derived State of New York 2006/2007 Executive Orders No. 2.

¹¹ See footnote 8.

¹² Derived from the Connecticut Code of Ethics for Public Officials.

¹³ Derived State of New York 2006/2007 Executive Orders No. 2.

¹⁴ Derived from the Connecticut Code of Ethics for Public Officials.

SECTION 2. *Integrity of the Processes of Government.* The integrity and reputation of the government and its processes should at all times be maintained. Government employment is a privilege rather than a right, and is based upon the trust and confidence placed in the State by the public. All public officials should act in a manner consistent with the public trust.

- (1) No public official in the performance of his or her official duties should use or attempt to use his or her official position to secure or create unwarranted privileges, exemptions, advantages, or treatment for himself or herself or others. Nor should a public official, alone or through others, use or attempt to use improper means to influence a department, agency, board, or commission of State government.¹⁵
- (2) No member of the General Assembly should vote on or influence legislation in committee or on the floor of either house, where he or she has a direct or indirect financial interest in the matter being considered, debated or voted upon, unless the official makes it abundantly clear that member's the decision or vote was not the result of any personal interest, but rather that it was through deliberative processes based solely on the member's views of the merits of the matter and/or what is in interests of the public. This may be accomplished making a statement in the following, or similar words: "It may be considered that I have a personal degree of interest in the subject matter of the bill, but I declare that my argument and my ultimate vote answer only to my conscience and my obligation to my constituents and the citizens of the State of Tennessee."¹⁶
- (3) No public official should willfully and knowingly disclose, directly or indirectly, for personal gain and not in a manner or for a purpose that is required or permitted by law, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment.¹⁷
- (4) Other than as required or permitted by law or in the performance of his or her official duties, no public official should receive anything of economic value or compensation, except for the officials regular salary and benefits, for any service, the subject matter of which is significantly related to the duties, programs, or operations of the public official's position.¹⁸
- (5) No public official should hire or supervise a member of the public official's immediate family. However, nothing in this section is intended to prohibit the continued employment of a member of the official's family who currently works for or is supervised by the official. Furthermore, this section is not intended to hinder normal promotional advancements for such employee if that employment predates the election, employment, or appointment of the public official. The public official

¹⁵ Derived from the Connecticut Code of Ethics for Public Officials and SR-85 Art. II § 2 (c)(3).

¹⁶ Taken from SR-85 Art. II § 2 (a)(1).

¹⁷ Derived from SR-85 Art. II § 2 (c)(4) and the Connecticut Code of Ethics for Public Officials.

¹⁸ Derived from the Connecticut Code of Ethics for Public Officials, the Louisiana Code of Governmental Ethics and SR-85 Art. II § 2 (c)(1).

should recuse himself or herself from any decision involving the promotion, discipline, discharge, or assignment of work to his or her immediate family member.¹⁹

- (6) No public official should improperly use public funds, time, personnel, or other state-provided resources for the private gain or political purpose of the official or that of another person, unless otherwise authorized by law.²⁰
- (7) No public official should request, receive, or agree to receive anything of value based upon any explicit understanding, or any reasonably inferred understanding, that his or her vote, opinion, judgment, or action will be influenced thereby.²¹

ARTICLE 4

COMPENSATION AND GIFTS

- (1) A public official should not accept any gratuity or compensation, unless otherwise authorized by State law, for the performance of his or her duties other than his or her official salary and allowances.²²
- (2) A public official should not solicit, receive, or accept a gift, favor, or service from any entity or individual which has a matter before the public official or the public official's direct authority or under circumstances where it could reasonably be inferred that such gift would influence the official in the discharge of his or her duties.²³
- (3) A public official, pursuant to T.C.A. §§ 3-6-304 and 305, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, as defined in T.C.A. §§ 3-6-301(8) and (17), unless there is a clear exception prescribed elsewhere by law. It is the public official's duty to insure that he or she becomes, and remains knowledgeable about the ethics laws and the gift ban restrictions.²⁴

¹⁹ Derived from the Louisiana Code of Governmental Ethics.

²⁰ Derived from the Connecticut Code of Ethics for Public Officials.

²¹ Derived from SR-85 Art. II §2 (a)(3 & 4)

²² T.C.A. § 2-10-123(a) and SR-85 Art. II § 2 (a)(2).

²³ Derived from SR-85 Art. II §2 (a)(3).

²⁴ T.C.A. §§ 3-6-304 and 305.

DOCUMENTS CONSULTED

1. HOUSE RESOLUTION 46, *Ethics Code for the House of Representatives of the Tennessee General Assembly*.
2. SENATE RULE 85, *Code of Ethics for the Tennessee State Senate*.
3. *Connecticut Code of Ethics for Public Officials*
(<http://www.ct.gov/ethics/cwp/view.asp?a=2313&q=315268>).
4. *Louisiana Code of Governmental Ethics*
(<http://www.ethics.state.la.us/laws/ethiclaw.htm>).
5. *State of New York Executive Orders Nos. 1 and 2*
(http://www.ny.gov/governor/executive_orders/index.html).